

Policy Advisory Committee

5 December 2018 Meeting - PAC#18

Policy Advisory Committee - Agenda

1. Apologies (absentees)

2. Minutes of the Meeting of PAC#17 (3 Sept 2018)

3. Review of action points from 3 September 2018

(relating to matters not otherwise appearing on the Agenda)

a. Proposal to alter the DNS check validation process

4. Update on the policy change to introduce an Alternative Dispute Resolution Process (ADRP)

5. Update on the policy change to remove restrictions on .ie domains corresponding to TLDs

6. Any Other Business

- Industry related developments / relevant legislative changes to be outlined by PAC members

- Register 365 update to the PAC

7. Next meeting(s)

3. Action Points & updates

from the 3 September meeting

Policy change – to alter the operation of the DNS check validation process

(for new registration, modification and registrant transfer tickets)

Action Points:-

- IEDR to undertake internal efforts to prepare for the implementation of this change, and to communicate the implementation date with the wider accredited .ie Registrar channel

Updates:-

- DNS check operational change was implemented on **28 November 2018** following Registrar engagement
- IEDR will continue to monitor the quality of the zone
- If there is a deterioration in the zone quality, the change may need to be re-visited

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4. Alternative Dispute Resolution (ADR) Policy

Objective is an easier and affordable process

Action Items:-

➤ ADR Working Group was expected to:-

- ✓ Engage with the Preferred Process Operator (PPO) to confirm the **cost impact** of including rights-based criteria within the scope of the ADRP
- ✓ Develop consensus for the **criteria** for a successful complaint and appropriate notification timeframes
- ✓ Launch a 30-day **consultation** with relevant stakeholders

Updates:-

- PPO confirmed that there would be **no cost increase** arising from the inclusion of rights-based criteria within the ADRP scope
- WG has found consensus for the use of, and text for, **a single set of “Complaint Submission Criteria”**, as opposed to the two distinct “Entry Requirements” and “Criteria for a successful complaint” previously detailed at the PAC #17 meeting.
- Consensus has also been found for **the appropriate notification timeframes** – 20 working day periods for right of reply
- 30-day **consultation** with relevant stakeholders was launched on 17 October 2018, ended on 16 November 2018. **(No adverse comments received)**

4. Alternative Dispute Resolution (ADR) Policy

Stakeholders consulted included:

- ❖ PAC representative organisations
- ❖ Competition and Consumer Protection Authority (CCPC)
- ❖ ComReg
- ❖ NetNeutrals
- ❖ Business representative organisations
 - (ISME, SFA)
- ❖ Brand Protection Registrars, including:
 - FR Kelly
 - Markmonitor
 - CSC

Comments received

- ❖ Hill & Associates (Solicitors)
 - Particularly noted value of Summary Decision
- ❖ Letshost (accredited .ie Registrar)
 - Commented positively (no objections raised)
- ❖ Markmonitor (accredited .ie Registrar)
 - Welcomed the ambitious, but achievable nature of proposal
 - Acknowledged the affordability of the service
- ❖ WIPO
 - Recognised need to include appropriate definitions
 - Happy to make UX improvements to ieDRP
 - Affirm WIPO's continuing commitment to ieDRP

4. Alternative Dispute Resolution (ADR) Policy

Consensus recap: Proposed Process

Proposed processes available under ADR:

- **Mediation** – Parties work to resolve complaint through discussion (aided by independent mediator). *Cost estimate €100-200*
- **Summary Decision** – Available to Complainant where Registrant refuses to acknowledge/respond to complaint. Specialist reviews complaint and determines whether it should be upheld/refused and remediation. *Cost estimate €200*
- **Specialist Decision** – Available where Registrant responds to complaint providing a defence. Specialist reviews input from both Parties and determines if complaint should be upheld/refused and remediation. *Cost estimate €750*
- **Specialist Opinion** (Non-binding) – Specialist reviews evidence submitted by Complainant and provides a non-binding opinion on the subject matter. Registrant is not involved. *Cost estimate €200*

Remediation Options – Resolution Outcomes:

- **Transfer** of the domain to the successful complainant, or
- **Deletion/revocation** of the domain, or
- **No action** taken where complaint is rejected or fails or is withdrawn.

4. Alternative Dispute Resolution (ADR) Policy

Process Criteria

ADR criteria previously discussed at PAC#17:-

Entry Requirements for Complainants:-

To engage in **any stage of the ADR Process**,

a Complainant must have proven that:

➤ It has **Legitimate Interests** in the Domain Name;

OR

➤ It is **negatively impacted** by the disputed registration.

Criteria for a successful complaint:-

The Complainant must assert and prove to the ADR PROVIDER that any **ONE** of the following has occurred:

➤ the Registrant has **no Legitimate Interests** in the Domain Name;

OR

➤ the Registrant's Domain Name has been registered in Bad Faith
<<**OR**>> is being used **Bad Faith**;

OR

➤ the Registrant is in **breach** of the IEDR Registrant T&Cs

- **The Working Group has continued its discussions on the appropriate criteria via the mailing list and conference call.**
- **After extensive discussion, consensus for found for the above alternative criteria set....**

4. Alternative Dispute Resolution (ADR) Policy

Consensus: Proposed Process

NEW Proposed Complaint Submission Criteria

Previously discussed “Entry Requirements” and “Criteria for a Successful Complaint” have been combined into single criteria set as follows:-

The Complainant must prove that:

- the Complainant would **ordinarily be eligible to register** the domain name in question if it was not already registered by the Registrant, and
- the Complainant
 - (i) **has rights** in the domain name or in marks or identifiers very similar to it, or
 - (ii) that the Complainant’s rights **have been negatively impacted** by the registration, and
- the registration of the domain should be **revoked** as it has been registered or used abusively or in bad faith

Proposed Time frames:

- Proposal is for **20 working days** for reply/appeals
- Proposal is for **21 day stay** on decision implementation (for notice of legal action)

4. Alternative Dispute Resolution - Suggested Process Flow for "Level 4 ADR" disputes

DISPUTE SUBMITTED
 Complainant requests remedy of domain **transfer or deletion**

* Registrar cc'd
 ** May also request a Specialist Opinion – but this is highly unlikely

REGISTRANT NOTIFIED*, GIVEN RIGHT OF REPLY –
 within 20 working days.
 Complainant elects to engage in mediation process?

YES

NO

ADR Provider asks Registrant to engage in mediation process?

YES

NO

REGISTRANT AGREES TO MEDIATION:
 Complainant may reply to any new information provided in Registrant reply – within 20 working days

PARTIES REFUSE MEDIATION:

Registrant doesn't provide response or rebuttal. Complainant may request a Summary Decision within 20 working days**	Registrant provides response or rebuttal. Complainant may request a Specialist Decision within 20 working days**
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MEDIATION
 Parties work to resolve issue via mediation. No time frame set. Is mediation successful?

YES

NO

RESOLVED:
 COMPLAINANT TAKES NO FURTHER ACTION – complaint considered withdrawn after 20 working days

UNRESOLVED:
 COMPLAINANT REQUESTS SPECIALIST DECISION – must open within 20 working days

SUMMARY DECISION
 (Decision without input from Registrant)
 If complaint upheld, domain may be transferred, or deleted. 21 day stay to allow notice of legal action.

Right of Appeal for a Specialist Decision:
 Registrant may submit appeal against a Summary Decision (with payment) within 20 working days

SPECIALIST DECISION
 (Specialist considers Registrant's rebuttal/defence)
 If complaint upheld, domain may be transferred, or deleted (as per ADR Provider's decision). 21 day stay to allow notice of legal action.
 Either party may submit appeal (with payment) within 20 working days.

DISPUTE SUBMITTED
 Complainant requests **Specialist Opinion** only.

SPECIALIST OPINION
 (Opinion does not result in action against the .ie domain)
 Specialist will provide opinion on issues including registration, domain "ownership", legal interpretations etc. based on evidence provided.



4. Alternative Dispute Resolution (ADR) Policy

Latest Updates:

- Proposed text for the ADR Policy and user-friendly (plain-English) guidelines drafted by Working Group
- Adopts same user-friendly format as .ie Registration and Naming Policy ('PPPRG')

- ✓ **P**olicy
- ✓ **P**rocess
- ✓ **P**rocedure
- ✓ **R**ules
- ✓ **G**uidelines

Guidelines within the Policy text document outline:-

- ❖ *how to **submit** a complaint*
- ❖ *how to **respond** to a complaint*
- ❖ *how to show that a registration is **not abusive or Bad Faith** (listing sample defences that can be provided by a Registrant)*

- Limited **consultation** held with relevant Stakeholders ended on **16 November 2018**
- Feedback received during the consultation was **favourable** to the ADRP introduction and proposed operation

4. Alternative Dispute Resolution (ADR) Policy

Consensus check:-

- ❖ Process?
- ❖ Criteria?
- ❖ Remedies?
- ❖ Costs?
- ❖ Policy text and plain-English Guidelines?

4. Alternative Dispute Resolution (ADR) Policy

Next Steps:

- Working Group to recommend policy change request to the PAC? **Yes/No**
- PAC to recommend policy change request to the IEDR Board of Directors? **Yes/No**
- IEDR to further engage with the PPO regarding implementation, final costings and contract
- IEDR to proceed with implementation:
 - ❖ Revert to WG if changes / issues arise
 - ❖ Liaise with Registrars regarding implementation date
 - ❖ Inform PAC of implementation date

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5. Policy change – TLD names

Policy change – to remove restrictions on .ie domains corresponding to TLDs

Action Point:-

- IEDR to work to schedule the release once other, higher priority, planned technical changes have been implemented

Update and Next Steps:-

- Industry feedback recommended against releasing **wpad.ie**
 - ❖ Refers to technical term - “Web Proxy Auto-Discovery Protocol”
 - ❖ IEDR will not release wpad.ie based on the industry advice received

aero.ie	heis.ie
coop.ie	sheis.ie
post.ie	weare.ie
wpad.ie	allinthename.ie
porn.ie	allinthenames.ie
school.ie	elliptic.ie
kid.ie	pin.ie

- Potential implementation of other 13 domains to be discussed (Phased mechanism to be used)

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6. Any Other Business...

- **Industry related developments / relevant legislative changes to be outlined by PAC members**
 - ❖ NIS
 - ❖ GDPR, WHOIS (ICANN updates)
 - ❖ Liberalisation: ~ 9 months since changes

- **Register 365 update to PAC**

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7. Next Meeting

FEBRUARY 2019						
MON	TUES	WED	THURS	FRI	SAT	SUN
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

MARCH 2019						
MON	TUES	WED	THURS	FRI	SAT	SUN
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

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